



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52

[EPA-R01-OAR-2012-0895; FRL-9841-3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Oxides of Nitrogen Exemption and Ozone Transport Region Restructuring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Maine's October 13, 2012, request for an exemption from the nitrogen oxides (NO_x) emissions control requirements of the Clean Air Act (CAA or Act) in relation to the 2008 8-hour ozone national ambient air quality standards (standards or NAAQS). EPA's proposed approval of Maine's request is based on a technical demonstration submitted to EPA by Maine's Department of Environmental Protection (ME DEP) showing that NO_x emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the Ozone Transport Region (OTR) to attain the ozone standards during times when elevated ozone levels are monitored in those areas.

Additionally, EPA is also proposing to approve the State of Maine's February 11, 2013 request that EPA approve a "limited opt-out" or "restructuring" of the Act's OTR requirements pertaining to nonattainment New Source Review (NSR) permitting requirements applicable to major new and modified stationary sources of volatile organic compounds (VOC). EPA is proposing to approve Maine's request because a technical demonstration submitted by ME DEP shows convincingly that the control of VOC emissions throughout the entire State of Maine through implementation of the VOC nonattainment NSR permitting requirements will not

significantly contribute to the attainment of the 2008 8-hour ozone standards in any area of the OTR.

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-R01-OAR-2012-0895 by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: arnold.anne@epa.gov
3. Fax: (617) 918-0047.
4. Mail: "Docket Identification Number EPA-R01-OAR-2012-0895," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912.
5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2012-0895. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an “anonymous access” systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA’s public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston,

MA 02109-3912. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at www.regulations.gov, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this Federal Register, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333-0017.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100, Boston, MA 02109-3912, telephone number (617) 918-1664, fax number (617) 918-0664, email Burkhart.Richard@epa.gov .

SUPPLEMENTARY INFORMATION:

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What is EPA Proposing?

EPA is proposing to approve two separate requests submitted by the State of Maine. The first request was submitted to EPA on October, 13, 2012, seeking an exemption from the NO_x emissions control requirements contained in section 182(f) of the Act in relation to the 2008 8-hour ozone national ambient air quality standards. More specifically, the emissions control requirements in question are: 1) any additional NO_x RACT requirements that might be required pursuant to the 2008 8-hour ozone standards; and 2) NO_x nonattainment NSR permitting requirements applicable to new and modified major stationary sources. Maine's SIP already contains language that renders the SIP's NO_x nonattainment NSR permitting requirements inapplicable in any area for which EPA has approved a section 182(f) NO_x exemption, so no SIP

revision would be required to implement the exemption from NO_x nonattainment NSR permitting requirements if EPA grants this proposed NO_x waiver. EPA's proposed approval of Maine's request is based on a technical demonstration submitted by Maine's Department of Environmental Protection (ME DEP) showing that NO_x emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain the ozone standards during times when elevated ozone levels are monitored in those areas. Consequently, any additional reductions in NO_x emissions in the State of Maine that would be required under the 2008 8-hour ozone standards, and which would be beyond what Maine's State Implementation Plan (SIP) regulations already provide for, are not necessary for attainment or maintenance of the ozone standards in any areas within the OTR. Thus, because any such NO_x reductions in Maine would be in excess of the emissions necessary for attainment and maintenance of the ozone standards, EPA has determined that those emissions reductions may be exempted under section 182(f) of the Act.

The State's second request, submitted to EPA on February 11, 2013, seeks EPA approval, pursuant to section 176A(a)(2) of the Act, of a "limited opt-out" or "restructuring" of the OTR requirements set forth in section 182(f) of the Act pertaining to VOC nonattainment NSR permitting requirements. In connection with this latter request, EPA expects to take final action on a request for a SIP revision that the State of Maine has committed to re-submit to EPA after the close of the State's public notice and hearing process on the proposed revision. The SIP revision would conform Maine's SIP to the section 176A(a)(2) restructuring of the VOC nonattainment NSR permitting requirements. The substance of both the OTR restructuring request and the State's proposed SIP revision are available now for review in the docket for this action, so EPA is proposing to approve them both, subject to the State completing its notice and hearing process on the SIP revision.

NO_x RACT and NO_x nonattainment NSR exemption:

The State of Maine is part of the OTR pursuant to section 184(a) of the Act. The entire State of Maine is designated unclassifiable/attainment for the 2008 8-hour ozone standards. (See 40 CFR 81.320.) Sections 182(f) and 184 of the Act, in combination, require states in the OTR, such as Maine, to adopt reasonably available control technology (RACT) regulations for major stationary sources of NO_x and to provide for nonattainment NSR for major new and modified stationary sources of NO_x. EPA's proposed approval of Maine's request is based on the State's technical demonstration showing that NO_x emissions in Maine are not having a significant adverse impact on the ability of nonattainment areas located in the OTR to attain and maintain the ozone standards during times when elevated ozone levels are monitored in those areas. Thus, because any such NO_x reductions in Maine would be in excess of the emissions necessary for attainment and maintenance of the ozone standards, EPA has determined that those emissions reductions may be exempted under Section 182(f) of the Act.

VOC nonattainment NSR restructuring:

Pursuant to section 176A(a)(2) of the Act, EPA is also proposing to approve the State's February 11, 2013 request to restructure or remove the VOC nonattainment NSR permitting requirements that currently apply in ozone attainment areas solely by virtue of Maine's location in the OTR (all of Maine is designated unclassifiable/attainment with the 2008 8-hour ozone standards). Maine's February 11, 2013 request is based on a "limited opt-out" or "restructuring" of the OTR requirements under section 176A(a)(2) of the Act. The State's request is justified by a technical demonstration that clearly supports ME DEP's conclusion that the VOC emissions

controlled by the State's nonattainment NSR permitting requirements will not significantly contribute to the attainment of the ozone standards in Maine or in any other area within the OTR.

In connection with this request, EPA expects to take final action on a request for a SIP revision that the State of Maine has committed to re-submit to EPA after the close of the State's public notice and hearing process on the proposed revision. The SIP revision would conform the language of Maine's SIP to the section 176A(a)(2) restructuring of the VOC nonattainment NSR requirements, i.e., render those requirements inapplicable solely by virtue of Maine's location in the OTR. Because all of Maine is designated unclassifiable/attainment for the 2008 8-hour ozone standards, the VOC nonattainment NSR permitting requirements in Maine's SIP would not currently apply anywhere in Maine. EPA will not take final action on Maine's section 176A(a)(2) restructuring request until Maine re-submits the request for a SIP revision described above to EPA. EPA would take final action on the restructuring request and the request for a SIP revision at the same time.

If EPA takes final action approving both of Maine's requests, and in addition approves the request for a SIP revision that the State of Maine has committed to re-submit to EPA, the following consequences would result. First, any NO_x RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would now not be required to be included in Maine's SIP through a SIP revision. However, NO_x RACT requirements already contained in Maine's SIP for purposes of implementing earlier ozone standards promulgated prior to the 2008 8-hour ozone standard will remain in Maine's SIP. Second, NO_x nonattainment NSR permitting requirements would no longer apply anywhere in the State upon EPA's approval of the NO_x waiver because Maine's currently approved NSR SIP already eliminates NSR for NO_x in areas where EPA has approved a NO_x waiver. Third, the VOC nonattainment NSR permitting requirements, which apply throughout the entire State of

Maine, would no longer apply in any area in Maine at this time and would never apply solely by virtue of Maine's location in the OTR. Fourth, for major new and modified stationary sources of VOC and NO_x throughout the entire State of Maine, Maine's PSD permitting requirements would apply in lieu of the nonattainment NSR permitting requirements. The primary differences between the nonattainment NSR and PSD permitting programs are that (1) the emissions threshold at which the permitting requirement is triggered can be higher in the PSD program, (2) the required level of control is more stringent under nonattainment NSR (lowest achievable emission rate (LAER) as compared to best achievable control technology (BACT) under PSD), and (3) emissions offsets must be obtained under nonattainment NSR to account for the new growth, but such emissions offsets are not required under PSD and, instead, sources must demonstrate that their new emissions will not exceed the emissions growth increment available in the area.

II. What are the Clean Air Act Requirements that Form the Legal Basis for EPA's Actions?

A. NO_x Exemption under section 182(f) of the Act.

The air quality planning requirements for the reduction of NO_x emissions are set out in section 182(f) of the Act. Section 182(f) requires states with areas designated and classified as moderate nonattainment and above for ozone, or located in ozone transport regions, to impose the same control requirements for major stationary sources of NO_x as apply under the Act to major stationary sources of VOC. These requirements include the adoption of RACT regulations for major stationary sources and the adoption of regulations for nonattainment NSR permitting applicable to major new and modified stationary sources of NO_x. Section 182(f)(1) of the Act, however, provides that these requirements do not apply if EPA determines that any of the tests

set forth in section 182(f) of the Act are met, i.e., tests based on the relationship of the NO_x emission reductions in question to: 1) net air quality benefit; 2) contribution to attainment; or 3) net ozone air quality benefits. Further, section 182(f) of the Act provides that EPA may limit the application of the NO_x emissions controls in question if EPA determines that such emissions reductions constitute excess reductions in emissions. If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of NO_x are excess for an entire area, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the applicable requirements.

On December 26, 1995 (60 FR 66748), EPA approved the State of Maine's section 182(f) NO_x exemption request for counties in northern Maine (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, Hancock and Waldo Counties) in relation to the 1-hour ozone standard. At this time, the NO_x exemption relating to the 1-hour ozone standard remains in effect as approved by EPA in 1995. In addition, on February 3, 2006 (71 FR 5791), EPA approved a section 182(f) NO_x exemption request for a similar area in Maine (specifically, Aroostook, Franklin, Oxford, Penobscot, Piscataquis, Somerset, Washington, and portions of Hancock and Waldo Counties) in relation to the 1997 8-hour ozone standard. At this time, the NO_x exemption relating to the 1997 8-hour ozone standard remains in effect as approved by EPA in 2006.

EPA's implementation rule for the 1997 8-hour ozone standard (69 FR 23951) requires areas to request a separate section 182(f) NO_x exemption request under the 1997 8-hour ozone standard, even if those areas previously received an exemption under the 1-hour ozone standard. Because EPA has not yet issued a final implementation rule for the 2008 8-hour ozone standard,¹ EPA has decided to follow the same approach as was taken in transitioning from the 1-hour

¹ EPA published in the Federal Register on June 6, 2013 (78 FR 34178) a proposed implementation rule that would follow the same approach.

ozone standards to the 1997 8-hour ozone standards , i.e., a state must request a separate NO_x exemption for the new 2008 8-hour ozone standards, even if that state had already been granted a NO_x exemption under section 182(f) under the 1997 8-hour ozone standard.

B. OTR Restructuring Request of the VOC nonattainment NSR Permitting Requirements.

Sections 172(c)(5) and 173 of the Act together contain the SIP permitting requirements applicable to new or modified major stationary sources in nonattainment areas. Section 184(b)(2) of the Act, relating to emissions control requirements applicable in ozone transport regions, provides that stationary sources that emit or have the potential to emit at least 50 tons per year of VOC are subject to the requirements which would apply to major stationary sources under the Act if the area were classified as a moderate nonattainment area. These provisions of the Act, in combination, resulted in the promulgation of the State of Maine's VOC nonattainment NSR SIP permitting requirements relevant to EPA's proposed action here. EPA's proposed approval of the State of Maine's OTR restructuring request, if finalized in a subsequent rulemaking in combination with action on a SIP revision, would mean that the VOC nonattainment NSR permitting requirements would no longer apply in the State of Maine on the sole basis that Maine is located in the OTR. The SIP's nonattainment NSR permitting requirements applicable to VOC sources will remain in the SIP but would only apply in ozone nonattainment areas, if EPA finalizes its approval of the section 176A(a)(2) restructuring request and approves the corresponding SIP revision. As a practical matter, however, because all areas in Maine are designated unclassifiable/attainment for the 2008 8-hour ozone standards, the VOC nonattainment NSR permitting requirements in the SIP would only apply if an area in Maine is designated nonattainment.

Section 176A of the Clean Air Act is entitled “Interstate Transport Commissions,” and contains the criteria upon which areas that are part of interstate transport regions may be added or removed from such transport regions. Section 176A(a)(2) provides that the EPA Administrator may remove any State or portion of a State from an interstate transport region, in this case the OTR, whenever the Administrator has reason to believe that control of emissions in that State or portion of the State pursuant to the Act’s requirements for that interstate transport region will not significantly contribute to attainment of a NAAQS in that interstate transport region. Implicit in EPA’s authority to remove a State or a portion of a State from the OTR in its entirety, is the authority to eliminate or “restructure” specific emissions control requirements for a State that remains in the OTR, provided that such State demonstrates that the control of emissions from such requirements will not significantly contribute to attainment of the ozone standards anywhere in the OTR. EPA’s proposed action under section 176A(a)(2) of the Act meets this requirement because the State of Maine has demonstrated that the control of VOC emissions through implementation of the nonattainment NSR permitting requirements will not significantly contribute to attainment of the ozone standards in the OTR. EPA previously has used this statutory authority to approve requests by the States of Maine and New Hampshire to restructure those states’ motor vehicle inspection and maintenance (I/M) requirements, on January 10, 2001. See 66 FR 1868 and 66 FR 1871, respectively.

III. What is the Scope of the NO_x Exemption under section 182(f) of the Act?

Section 182(f) provides that if the EPA Administrator determines that additional reductions of NO_x are excess, the area in question shall be exempt from the following requirements (as applicable): motor vehicle inspection and maintenance (I/M) program NO_x requirements; the NO_x-related general conformity provisions; the NO_x-related transportation

conformity provisions in 40 CFR Part 93; NO_x RACT; and nonattainment area NSR for major new sources and modifications of NO_x. (See Section 182(f) of the Act, 40 CFR 51.351(d) for I/M, 40 CFR 93.119(f)(2) for transportation conformity and 40 CFR 93.199 (f)(2) for general conformity.) If the EPA Administrator determines, under Section 182(f) of the Act, that additional reductions of NO_x are excess for an entire area, the area at issue shall automatically (i.e., a State would not need to submit an exemption request for each requirement) be exempt from the applicable requirements.

Consequently, if EPA finalizes its approval of Maine's request for a section 182(f) NO_x exemption, Maine need not modify its NO_x control SIP provisions to address any new emissions controls required in relation to the 2008 8-hour ozone standard, including I/M.² Also, because the entire State of Maine is now designated unclassifiable/attainment for the 2008 8-hour ozone standard, transportation conformity for the 2008 8-hour ozone standard (See 40 CFR 93.102(b)) and general conformity in relation to the 2008 8-hour ozone standard (See 40 CFR 93.153) do not apply. EPA's proposed action on Maine's October 13, 2012 section 182(f) request for a NO_x exemption, if finalized, would have no impact on I/M or conformity requirements in Maine. Furthermore, if EPA's proposed approval of Maine's section 182(f) NO_x exemption request is finalized, any NO_x RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would not be required (although NO_x RACT requirements already contained in Maine's existing SIP for purposes of implementing prior ozone standards will remain in Maine's SIP). Finally, NO_x nonattainment NSR permitting requirements would no longer apply anywhere in the State. If EPA's action on Maine's request is finalized, major new and modified stationary sources of NO_x would be subject to the Maine SIP's PSD permitting requirements in lieu of the NO_x nonattainment NSR permitting

² As noted earlier in this notice of proposed rulemaking, Maine also received a "limited opt-out" or "restructuring" of the Act's I/M requirements in 2001 pursuant to section 176A(a)(2) of the Act.

requirements. The primary differences between those two permitting requirements are described earlier in this notice of proposed rulemaking.

IV. What is the Scope of the Proposed VOC nonattainment NSR Restructuring under section 176A(a)(2) of the Act?

All areas in the State of Maine are designated unclassifiable/attainment for the 2008 8-hour ozone standard. Consequently, the effect of the proposed VOC nonattainment NSR restructuring in combination with the planned SIP revision, will be that the Maine SIP's PSD regulations, applicable to permitting major new or modified stationary sources of regulated NSR pollutants including VOC, would apply in lieu of the State's nonattainment NSR permitting requirements in every area within the State. The VOC nonattainment NSR permitting requirements currently part of Maine's SIP would no longer be applicable anywhere in the State solely by virtue of Maine's location in the OTR. The primary differences between those two permitting requirements are described earlier in this notice of proposed rulemaking.

V. What are the Technical Criteria EPA used to Evaluate Maine's Requests?

EPA's criteria for the evaluation of a request for a section 182(f) NO_x exemption are set forth in a memorandum from Stephen D. Page, Director, OAQPS, dated January 14, 2005, entitled "Guidance on Limiting Nitrogen Oxides Requirements Related to 8-Hour Ozone Implementation." As explained earlier in this notice of proposed rulemaking, EPA evaluated Maine's technical demonstration and has concluded that the demonstration shows that NO_x emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain or maintain the ozone standards during times

when elevated ozone levels are monitored in those areas. EPA is therefore proposing to approve Maine's request for a section 182(f) NO_x exemption.

EPA's criteria for opting out of the OTR are set forth in a memorandum from John S. Seitz, Director, OAQPS, dated May 25, 1995, and entitled "Technical Guidance for Removing Areas from the Northeast Ozone Transport Region (OTR)." As noted earlier in this notice of proposed rulemaking, EPA evaluated Maine's technical demonstration and determined that Maine's demonstration shows that the control of VOC emissions through implementation of the nonattainment NSR permitting requirements in Maine will not significantly contribute to attainment of the ozone standard anywhere in the OTR. EPA is therefore proposing to approve Maine's request for a section 176A(a)(2) restructuring of the VOC nonattainment NSR permitting requirements.

VI. What was included in the State of Maine's Requests?

As noted earlier, Maine submitted a technical demonstration with its request for a section 182(f) NO_x exemption showing that NO_x emissions in Maine are not having a significant adverse impact on the ability of any nonattainment area located in the OTR to attain or maintain the ozone standards during times when elevated ozone levels are monitored in those areas.

For the State's section 176A(a)(2) VOC nonattainment NSR restructuring request, Maine's technical demonstration showed that the control of emissions from those permitting requirements will not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area in the OTR.

The State's submittals include detailed technical analyses for VOC and NO_x emissions in the State, including an analysis of whether emissions from Maine impact areas in the OTR. The State's technical analyses rely on several different techniques used to analyze those emissions

and their impacts, the primary technique being back trajectories using the HYSPLIT trajectory model.

For the section 182(f) NO_x exemption and the VOC nonattainment NSR restructuring requests, ME DEP air quality meteorologists conducted air trajectory analyses of days during the 2009 through 2011 ozone seasons at times when elevated ozone levels were monitored. The analyses were conducted for monitoring sites in the ozone nonattainment areas closest to Maine, in the State of Connecticut and on Martha's Vineyard, Massachusetts. The air trajectories used by ME DEP are four-dimensional representations of the path an air parcel follows, in time, based on archived surface and upper-level meteorological data. A back trajectory, as used by ME DEP in this case, is the path the parcel takes to reach a specific point in time and space. ME DEP created a back trajectory for each hour that ozone levels were equal to or greater than 75 parts per billion (ppb) for every day that the 2008 ozone standard was exceeded (i.e., ozone levels exceeded 0.075 parts per million (or 75 ppb) on an 8-hour average basis) and recorded in the State of Connecticut and in Martha's Vineyard, Massachusetts. For each such instance, 24-hour back trajectories from 10, 150 and 250 meters above ground level were created.

ME DEP used the National Oceanic and Atmospheric Administration (NOAA) Air Resources Laboratory's HYSPLIT model to create and map the trajectories. The HYSPLIT model uses gridded meteorological data, which is selected within the on-line model's graphical user interface. For more information about HYSPLIT please refer to the following document by Roland R. Draxler and G.D. Hess: *Description of the HYSPLIT 4 Modeling System*. (See <http://www.arl.noaa.gov/documents/reports/arl-224.pdf>.) ME DEP staff meteorologists used the on-line version of the HYSPLIT model to create the trajectories used in the DEP's analyses. Archived ETA Data Assimilation System (EDAS) meteorological data at 40 kilometers (km) was used because that data set had the best resolution and had an excellent data recovery rate.

ME DEP provided to EPA a map of HYSPLIT back trajectories calculated for all hours when ozone monitoring sites in the State of Connecticut and in Martha's Vineyard, Massachusetts exceeded the 2008 ozone standards. That map clearly shows that emissions from Maine do not have a significant adverse impact on the ability of any nonattainment area located in the OTR to attain and maintain the 2008 8-hour ozone standards, because none of the dozens of plotted back trajectories originate in Maine or even traverse any portion of Maine. Therefore, the analysis demonstrates convincingly that NO_x and VOC emissions in Maine will not significantly contribute to attainment of the ozone standards anywhere in the OTR.

In addition to the trajectories discussed above, Maine also provided in its request for VOC nonattainment NSR restructuring information from several ozone modeling analyses conducted by EPA for the eastern United States. Maine's submission referenced EPA photochemical modeling for: 1) the NO_x SIP call (63 FR 57356; October 27, 1998); 2) the Clean Air Interstate Rule (CAIR) (70 FR 25162; May 12, 2005); and 3) the Cross State Air Pollution Rule (CSAPR) (76 FR 48208; August 8, 2011). Table 1 below contains a summary of those EPA modeling results for the State of Maine. With regard to NO_x emissions in Maine, the detailed photochemical ozone modeling for these three programs shows that emissions of NO_x in the State of Maine do not have a significant adverse impact on the ability of any ozone nonattainment areas in the OTR to attain or maintain the 2008 8-hour ozone standards.³ With regard to VOC emissions in Maine, the detailed photochemical ozone modeling shows that control of emissions of VOC in Maine do not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area of the OTR.

³Although the CSAPR rule was vacated (*See EME Homer City Generation, L.P. v. EPA*, No. 11–1302 (D.C. Cir. August 21, 2012), nothing in the opinion disturbs or calls into question that conclusion or the validity of the air quality modeling on which the conclusion is based.

Table 1. Maine's Modeled Impacts (ppb) on Massachusetts and Connecticut 8-hour Ozone Nonattainment Areas

State	NO _x SIP Call	Clean Air Interstate Program	Cross State Air Pollution Regulation
Connecticut	0	0.1	0.141
Massachusetts (Dukes County)	0 [#]	0.3 [#]	0.015

Note that Dukes County, Massachusetts was not modeled for these two programs so the impact to Rhode Island was used because it is representative of the Massachusetts Dukes County nonattainment area. Dukes County, Massachusetts consists of several islands in Nantucket Sound, the largest of which is Martha's Vineyard.

VII. What is EPA's Evaluation of Maine's Requests?

Based on the ME DEP's technical analyses discussed above, EPA believes that the State has demonstrated convincingly that control of emissions of VOC in Maine do not significantly contribute to the attainment of the 2008 8-hour ozone standard in any area in the OTR. Such demonstration is sufficient to support Maine's section 176A(a)(2) VOC nonattainment NSR restructuring request. Based on those same technical analyses, EPA has determined that the State has demonstrated convincingly that emissions of NO_x in Maine are not having a significant adverse impact on the ability of any ozone nonattainment areas in the OTR to attain or maintain the ozone standards during times when elevated ozone levels are monitored in those areas. Such demonstration is also sufficient to support Maine's request for a NO_x exemption under section 182(f).

Consequently, EPA is proposing to approve both the State's request for an exemption from the section 182(f) NO_x requirements and the State's request to restructure or obtain a "limited opt-out" of the Act's VOC nonattainment NSR requirements relating to the OTR.

VIII. Which Provisions did Maine Request be Removed by EPA from the SIP?

In its February 11, 2013 request to EPA, Maine requested that EPA remove specific language from certain parts of its SIP consistent with the State's request under section

176A(a)(2) for VOC nonattainment NSR restructuring. By letter dated July 5, 2013, Maine committed to provide notice and an opportunity for a hearing on the proposed SIP revisions and to resubmit its request for a SIP revision after the public participation process concludes. As noted earlier, Maine's existing SIP provisions contain language that will be consistent with a section 182(f) NO_x exemption in relation to the 2008 8-hour ozone standards, but Maine's request for a SIP revision would nonetheless also affect the applicability of NO_x nonattainment NSR in Maine as explained below.

NO_x exemption under section 182(f).

If EPA takes final action to approve Maine's section 182(f) request, EPA's approval would apply to all areas within the State of Maine and NO_x nonattainment NSR would not apply anywhere in Maine because: 1) all areas in Maine are designated attainment for the 2008 8-hour ozone standards; and 2) Maine's existing SIP states that NO_x nonattainment NSR does not apply in any area for which EPA has approved a section 182(f) NO_x exemption. The State's proposed SIP revision would, however, also affect NO_x nonattainment NSR in Maine because a source's location in the OTR would be removed from the SIP as the sole basis for applicability of those requirements, i.e., NO_x nonattainment NSR would no longer apply in attainment areas in Maine by virtue of the State being part of the OTR.

VOC nonattainment NSR restructuring under section 176A(a)(2).

As noted above, in its February 11, 2013 request to EPA, Maine requested that EPA remove specific language from certain parts of its SIP consistent with the State's request under section 176A(a)(2) for VOC nonattainment NSR restructuring. Subsequently, by letter dated July 5, 2013, Maine committed to provide notice and an opportunity for a hearing on the

proposed SIP revisions and to resubmit its request to EPA for a SIP revision after the public participation process concludes. Because all areas in Maine are designated attainment for the 2008 ozone standards, the Maine SIP's VOC nonattainment NSR permitting requirements only now apply in Maine because Maine is part of the OTR. Thus, the language that would be removed from Maine's SIP imposes requirements that now apply only by virtue of a source's location within the OTR. As noted earlier in this notice of proposed rulemaking, EPA will not take final action on the State's request for a SIP revision until: 1) the State's public participation process on the revisions has concluded and the State has resubmitted its request for a proposed SIP revision to EPA; and 2) until such time as EPA takes final action on the State's request for the section 176A(a)(2) VOC nonattainment NSR restructuring.

The SIP revision would affect specific parts of two chapters of Maine's nonattainment NSR permitting regulations previously approved by EPA into the SIP. The first is Chapter 113 entitled "Growth Offset Regulations" which contains emissions offsets requirements for sources subject to nonattainment NSR. The second is Chapter 115 entitled "Emission License Regulation" which includes generally applicable requirements for sources that must obtain an emissions license in Maine. EPA last approved amendments to Chapters 113 and 115 on February 14, 1996 (61 FR 5690). If EPA takes final action to approve Maine's section 182(f) NO_x exemption request and section 176A(a)(2) request for VOC nonattainment NSR restructuring, the Maine SIP provisions pertaining to nonattainment NSR permitting requirements for ozone arising from Maine's location in the OTR will no longer be necessary under 40 CFR 51.165. EPA is proposing to approve Maine's request to remove the SIP provisions contained in Chapters 113 and 115 of Maine's regulations that impose nonattainment NSR for sources of VOC on the basis of the source's location in the OTR.

More specifically, EPA is proposing to remove from Chapter 113 all references to the OTR as a basis for the applicability of VOC nonattainment NSR permitting requirements. Those references appear in section 1 (Applicability), section 2.C.1 (Ozone Nonattainment Areas), section 2.C.2 (Ozone Nonattainment Areas, Location of offsets), and section 3 (Exemptions). EPA also is proposing to remove references in Chapter 113 to the permissible location of emissions offsets for attainment areas (these provisions for attainment areas are only relevant if location in the OTR is a basis for nonattainment NSR applicability). These references appear in sections 2.C.3 (Ozone Nonattainment Areas) and 2.C.3.b. (Ozone Nonattainment Areas) of Chapter 113, and will not be relevant if the section 176A(a)(2) restructuring is approved, because new or modified major stationary sources of VOC located in areas attaining the ozone standard will no longer be required to obtain offsets. In Chapter 115, EPA proposes to remove the reference to the OTR in Sections V.B.2 (Criteria for Granting a License) and VI.B.2 (New sources and modifications, Nonattainment areas).

If EPA takes final action approving the State's requests for a section 182(f) NO_x exemption and a section 176A(a)(2) restructuring (and the associated SIP revisions described above), the Maine SIP's PSD permitting requirements would apply in lieu of the SIP's nonattainment NSR permitting requirements for any major new or modified stationary source of VOC and/or NO_x located anywhere in the State of Maine.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this notice.

IX. Proposed Actions.

EPA is proposing to approve Maine's October 13, 2012 request for an exemption from the requirements for the control of NO_x emissions contained in section 182(f) of the Act in relation to the 2008 8-hour ozone standards. The exemption would apply throughout the entire State of Maine. EPA is also proposing to approve Maine's February 11, 2013 request for a limited "opt-out" or "restructuring" of the section 182(f) OTR requirements pertaining to VOC nonattainment NSR permitting, currently applicable in Maine only by virtue of Maine's location in the OTR, not by virtue of Maine having any areas designated nonattainment for the 2008 8-hour ozone standards. In addition, EPA is proposing to approve Maine's request for the SIP revisions described earlier in this notice.

If EPA takes final action to approve Maine's requests, including the SIP revisions described above, the following consequences would result. First, any NO_x RACT requirements that would otherwise have been necessary in Maine in relation to the 2008 8-hour ozone standard would now not be required. However, any NO_x and/or VOC requirements earlier approved into Maine's SIP to implement regional haze requirements or requirements relating to prior, pre-2008, ozone standards, will remain in Maine's SIP. Second, nonattainment NSR permitting requirements for major new or modified stationary sources of NO_x in Maine would no longer apply anywhere in the State. Third, the nonattainment NSR permitting requirements applicable to major new and modified stationary sources of VOC, which now apply throughout the entire State of Maine, would no longer apply in any area in Maine. Fourth, for major new and modified stationary sources of VOC and NO_x throughout the entire State of Maine, the Maine SIP's PSD permitting requirements would apply in lieu of the nonattainment NSR permitting requirements. Finally, the requirements applicable to sources holding existing nonattainment NSR permits will remain in effect.

As part of this action, EPA is proposing to revise certain provisions in Maine's SIP. The SIP revisions would affect specific parts of two chapters of Maine's nonattainment NSR permitting regulations previously approved by EPA into the SIP. The first is Chapter 113 entitled "Growth Offset Regulations" which contains emissions offsets requirements for sources subject to nonattainment NSR. The second is Chapter 115 entitled "Emission License Regulation" which includes generally applicable requirements for sources that must obtain an emissions license in Maine. More specifically, EPA is proposing to remove from Chapter 113 all references to the OTR as a basis for the applicability of VOC nonattainment NSR permitting requirements. Those references appear in section 1 (Applicability), section 2.C.1 (Ozone Nonattainment Areas), section 2.C.2 (Ozone Nonattainment Areas, Location of offsets), and section 3 (Exemptions). EPA also is proposing to remove references in Chapter 113 to the permissible location of emissions offsets for attainment areas (these provisions for attainment areas are only relevant if location in the OTR is a basis for nonattainment NSR applicability). These references appear in sections 2.C.3 (Ozone Nonattainment Areas) and 2.C.3.b. (Ozone Nonattainment Areas) of Chapter 113, and will not be relevant if the section 176A(a)(2) restructuring is approved, because new or modified major stationary sources of VOC located in areas attaining the ozone standard will no longer be required to obtain offsets. In Chapter 115, EPA proposes to remove the reference to the OTR in Sections V.B.2 (Criteria for Granting a License) and VI.B.2 (New sources and modifications, Nonattainment areas).

X. Statutory and Executive Order Reviews.

Under the Clean Air Act, the Administrator is required to approve a state's submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing state submissions, EPA's role is to approve state

choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions, merely propose to approve Maine's requests as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these proposed actions:

- are not "significant regulatory actions" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having significant economic impacts on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the Maine SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects:

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 et seq.

Dated: July 18, 2013

H. Curtis Spalding
Regional Administrator,
EPA New England.